INDEX.

PAGE

Statement 1

Propositions 2

Argument and authorities 3

Proposition I. The act of the legislature of the State of Texas, article 6066(a), section 10, Revised Statutes of Texas, contravenes, violates and is repugnant to article 1, section 10, of the Federal Constitution, and to the 5th and 14th articles of amendments thereto 3

Proposition II. The act is unreasonable because it confers arbitrary, capricious and oppressive powers on state authorities 14

Proposition III. The act interferes with and creates burdens on interstate commerce 18

Cases Cited.

Brown v. United States, (1814) 8 Cranch 122 3

Champlin Refining Co. v. Corporation Commission, 286 U. S. 210 15

Conrad v. Waples, 96 U. S. 279 8

Cummings v. Missouri, 4 Wall. 277 7

Drehman v. Stifle, 8 Wall. 595 8

Ex parte Garland, 4 Wall. 333 8

Fletcher v. Peck, 6 Cranch 87 9

French v. Wade, 102 U. S. 132 9

Henkels v. Sutherland, 271 U. S. 298 8

Kentucky Whip & Collar Company v. Illinois Central Railroad Co., (U. S.) No. 138, Sept., 1936, term . . 19

Lemke v. Farmers Grain Co., 258 U. S. 50 19

CASES—CONTINUED.

	PAGE
Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61	15
Mugler v. Kansas, 123 U. S. 623	20
Ohio Gas Co. v. Conway, 281 U. S. 146	15
Page v. United States, 11 Wall. 268 (Dec. 1870 term)	6
Pike v. Wassel, 94 U. S. 711	9
Ruppert v. Caffey, 251 U. S. 264	11
Shields v. Schiff, 124 U. S. 351	9
Sterling v. Constantine, 287 U. S. 398	14
Truax v. Raich, 239 U. S. 33	21
Samuels v. McCurdy, 267 U. S. 188	20
Wallace v. Van Riswick, 92 U. S. 202	9
Waples v. Hayes, 108 U. S. 6	9
Ware v. Hylton, et al., 3 Dallas 199	3
West v. Kansas Natural Gas Co., 221 U. S. 299	19

STATUTES CITED.

Acts of Congress, August 6, 1861 (Stat. at L. XII, 319, and July 17, 1862, Stat. at L. XII, 589 and 627)	5
Constitution, Art. I, Sec. 8, Par. 3	18

TEXT-BOOKS CITED.

Blatchford Prize Cases 620	4
Cyclopedia of American Government, Vol. I, p. 380	5-6
The Federalist, No. 44, by Mr. Madison, Vol. X—15	17-18
Webster, Vol. X, p. 218	16
Webster, Vol. XI, p. 11	19

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1937.

No. 28

STATE OF TEXAS AND J. C. CLOPTON AND BULLOCK HYDE, RECEIVERS, ETC., *Petitioners,*

vs.

DAVID DONOGHUE, TRUSTEE OF TRINITY REFINING COMPANY, DEBTOR, *Respondent.*

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

REPLY OF RESPONDENT TO SUPPLEMENTAL AND REPLY BRIEF FOR THE STATE OF TEXAS.

The order allowing *certiorari* clearly states the issues in this case:

> "The petition for writ of *certiorari* is granted limited to the question raised upon the application of the State for permission to take proceedings for the confiscation of the alleged illegal oil."

This raises for first consideration the right and power of the State to confiscate the property involved.

Propositions.

Respondent urges the following propositions:

I.

The Act of the Legislature of the State of Texas, article 6066(a), section 10, Revised Statutes of Texas, contravenes, violates and is repugnant to article 1, section 10 of the Federal Constitution, and to the 5th and 14th Articles of Amendments thereto.

II.

The act is unreasonable because it confers arbitrary, capricious and oppressive powers on state authorities.

III.

The act interferes with and creates burdens on interstate commerce.

ARGUMENT *and* AUTHORITIES.

PROPOSITION I.

The act of the legislature of the State of Texas, article 6066(a), section 10, Revised Statutes of Texas, contravenes, violates and is repugnant to article 1, section 10, of the Federal Constitution, and to the 5th and 14th articles of amendments thereto.

The act involved here, is clearly an act of confiscation. That is the State's own construction (R. 32; State's brief, 3, 4, 5, 6, 12, 15, 16, 19, 20, 23, 26; State's supplemental and reply brief, 1, 2, 3, 5, 9).

Judicial history discloses that confiscation is a war measure, or in the nature of war measure:

> "It is a general rule that the property of the subjects of an enemy found in the country may be appropriated by the government without notice, unless there be a treaty to the contrary." *(Ware* v. *Hylton, et al.*, 3 Dallas 199.)

Chief Justice MARSHALL in an early case, *Brown* v. *United States,* (1814) 8 Cranch 122, said:

> "Respecting the power of government no doubt is entertained. That war gives to the sovereign full right to take the persons and confiscate the property of the enemy whenever found is conceded. The mitigations of this rigid rule, which the humane and wise policy of modern times has introduced into practice, will more or less affect the exercise of this right, but cannot impair the right itself.

"That remains undiminished, and when the sovereign authority shall choose to bring it into operation, the judicial department must give effect to its will. But until that will shall be expressed, no power of condemnation can exist in the court.

"The modern rule, then would seem to be, that tangible property belonging to an enemy and found in the country at the commencement of war, ought not to be immediately confiscated.

"The proposition that a declaration of war does not, in itself, enact a confiscation of the property of the enemy within the territory of the belligerent, is believed to be entirely free from doubt.

"The 'act concerning Letters of Marque, prizes, and prize goods,' certainly contains nothing to authorize this seizure.

"There being no other act of Congress which bears upon the subject, it is considered as proved that the legislature has not confiscated enemy property which was within the United States at the declaration of war; and that this sentence of condemnation cannot be sustained.

"It appears to the court, that the power of confiscating enemy property is in the legislature, and that the legislature has not yet declared its will to confiscate property which was within their territory at the declaration of war."

And the following from Blatchford Prize Cases 620:

"A suit in confiscation is an action of entirely different nature from a proceeding in prize. Confiscation is the act of the sovereign against a rebellious subject. Condemnation as prize is the act of a belligerent against another belligerent. Confiscation may be effected by such means, either summary or arbitrary, as the sove-

reign expressing its will through lawful channels, may please to adopt. Condemnation as prize can only be made in accordance with principles of law recognized in the common jurisprudence of the world. Both are proceedings *in rem*, but confiscation recognizes the title of the original owner to the property which is to be forfeited, while in prize the tenure of the property seized is qualified, provisional and destitute of absolute ownership."

During the Civil War, acts, generally known as the Confiscation Acts, were passed by Congress, August 6, 1861 (Stat. at L. XII, 319, and July 17, 1862, Stat. at L. XII, 589 and 627), under which,

"All of the offender's property was to be forfeited and sold, the proceeds to be paid into the United States Treasury and applied to the support of the armies. An 'Explanatory Joint Resolution,' intended to save the measure from the veto of President LINCOLN, who regarded the original bill as violating the attainder clause of the Constitution (Art. 1, Sec. IX, ¶3), limited the duration of the forfeiture of real estate to the life of the offender. * * * The proceedings, enforced through the federal district courts under the direction of the attorney general and the district attorneys, were conducted as actions *in rem* with a general conformity to admiralty procedure, allowing, however, the common law right of jury trial (*Morris* v. *Cotton*, 8 Wallace 507). The acts were not extensively enforced, the largest seizures being effected in the border states, and in Louisiana and New York. Though a considerable litigation was occasioned, the net proceeds secured (approximately $130,000 for the second confiscation act) were almost incredibly small. Financially, then, confiscation was a failure, while the other object of the acts, that of punishment, was very unequally accomplished. The Su-

preme Court (11 Wallace 268) upheld the constitutionality of these acts, placing them in the category of war measures, supported by 'an undoubted belligerent right,' and declaring that they involved no unconstitutional denial of 'due process of law'."

—Cyclopedia of American Government, Vol. I, p. 380.

One of the most important opinions of this court on confiscation is *Page* v. *U. S.*, 11 Wal. 268 (Dec. 1870 term). The decision was by a divided court, Mr. Justice FIELD, Mr. Justice CLIFFORD and Mr. Justice DAVIS dissenting. It appears from the opinions that President LINCOLN, even though the confiscation acts were war measures, indicated he would not sign the act, because as stated in Mr. Justice FIELD's dissenting opinion, he, President LINCOLN, was of the opinion that the act was unconstitutional and that he intended to veto it. His objections were that the restrictions of the Constitution concerning forfeitures not extending beyond the life of the offender had been disregarded. To meet his objection a Joint Resolution explanatory of the act was passed by the House and Senate, and President LINCOLN returned the bill with a message in which he stated that he considered the act and Resolution explanatory of the act as being substantially one, and had approved and signed both.

From Mr. Justice FIELD's dissent we quote:

"It seems to me that the reasoning (in majority opinion) which upholds the proceedings in this case, works a complete revolution in our criminal jurisprudence, and establishes the doctrine that proceedings for the punishment of crime against the person of the offender may be disregarded, and proceedings for such punishment be taken against his propeerty alone; or

that proceedings may be taken at the same time both against the person and the property, and thus a double punishment for the same offense be inflicted."

In reference to Bills of Attainder, this court has held, *Cummings* v. *Missouri*, (1866) 4 Wall. 277, opinion by Mr. Justice FIELD as follows:

"No state shall pass any bill of attainder, *ex post facto* law, or law impairing the obligations of contract.

"A bill of attainder is a legislative act which inflicts punishment without a judicial trial.

"If the punishment be less than death, the act is termed a bill of pains and penalties. Within the meaning of the Constitution, bills of attainder include bills of pains and penalties. In these cases the legislative body, in addition to its legitimate functions, exercises the powers and office of judge; it assumes, in the language of the text books, judicial magistracy; it pronounces upon the guilt of the party, without any of the forms or safeguards of trial; it determines the sufficiency of the proofs produced, whether conformable to the rules of evidence or otherwise; and it fixes the degree of punishment in accordance with its own notions of the enormity of the offense.

"In all these cases there would be the legislative enactments creating the deprivation, without any of the ordinary forms and guards provided for the security of the citizen in the administration of justice by the established tribunals.

"The legal result must be the same, for what cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows. Its inhibition was leveled at the thing, not the name. It intended that the rights of the citizen should be secure against deprivation for past conduct by legislative en-

actment, under any form, however disguised. If the inhibition can be evaded by the form of the enactment, its insertion in the fundamental laws was a vain and futile proceeding."

See, also, *Ex parte Garland*, 4 Wall. 333;

"All enactments of this kind partake of the nature of bills of pains and penalties, and are subject to the constitutional inhibition against the passage of bills of attainder, under which general designation they are included."

See, also, *Drehman* v. *Stifle*, 8 Wall. 595.

Enemy property cannot be condemned by the court without an Act of Congress authorizing its seizure and confiscation. *Conrad* v. *Waples*, 96 U. S. 279 (October term 1877, opinion by Mr. Justice FIELD).

This court in *Henkels* v. *Sutherland*, 271 U. S. 298, in an opinion in a case arising under Trading With the Enemy Act (Alien Property Custodian), opinion by Mr. Justice SUTHERLAND, in a claim for the recovery of the proceeds of the sale of certain corporate stock which had been seized, held:

"With enemy-owned property seized by the custodian, it has been held, the United States may deal as it sees fit, *White* v. *Mechanics Securities Corp.*, 269 U. S. 283, *ante*, 275, 46 Sup. Ct. Rep. 116 (decided Dec. 14, 1925); but it has no such latitude in respect of the property of an American citizen. Whether the government shall pay interest upon its obligations depends upon congressional assent; but it cannot confiscate the actual increment of property belonging to a citizen, or the increment of the proceeds into which such property has been converted, any more than it can confiscate the

property or its proceeds, without coming into conflict with the Constitution.'

See, also, *French* v. *Wade*, 102 U. S. 132, where even under the confiscation acts of the Civil War the heirs of the owners of lands seized thereunder were protected in their inheritances by the Joint Resolution of the House and Senate passed at President LINCOLN's special request.

To the same effect, see *Pike* v. *Wassel*, 94 U. S. 711.

Sale of confiscated property under the Act of July 17, 1862, did not affect a mortgage on the property in favor of a third person; and a subsequent sale under the mortgage may be valid. *Shields* v. *Schiff*, 124 U. S. 351.

Even under the confiscation acts of the Civil War the estate acquired by a purchaser of the confiscated real property terminates with the life of the person for whose act it was seized. *Waples* v. *Hayes*, 108 U. S. 6; *Wallach* v. *Van Riswick*, 92 U. S. 202.

From *Fletcher* v. *Peck*, 6 Cranch 87, we quote a part of Chief Justice MARSHALL's opinion:

"Whatever respect might have been felt for the state sovereignties, it is not to be disguised that the framers of the constitution viewed, with some apprehension, the violent acts which might grow out of the feelings of the moment; and that the people of the United States, in adopting that instrument, have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed. The restrictions on the legislative power of the states are obviously founded in this sentiment; and the Constitution of the United States contains what may be deemed a bill of rights for the people of each state.

"No state shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.

"A bill of attainder may affect the life of an individual, or may confiscate his property, or may do both.

"In this form the power of the legislature over the lives and fortunes of individuals is expressly restrained. * * *

"The state legislatures can pass no *ex post facto* law. An *ex post facto* law is one which renders an act punishable in a manner in which it was not punishable when it was committed. Such a law may inflict penalties on the person, or may inflict pecuniary penalties which swell the public treasury.

"Why, then, should violence be done to the natural meaning of words for the purpose of leaving to the legislature the power of seizing, for public use, the estate of an individual in the form of a law annulling the title by which he holds the estate? The court can perceive no sufficient grounds for making this distinction. This rescinding act would have the effect of an *ex post facto* law.

"It forfeits the estate of Fletcher for a crime not committed by himself, but by those from whom he purchased.

"This cannot be effected in the form of an *ex post facto* law, or bill of attainder; why, then, is it allowable in the form of a law annulling the original grant?"

We respectfully contend that the powers of confiscation of private property of a citizen can only be authorized and exercised by Act of Congress as a war measure.

The police power which the states may exercise, without infringing the rights of citizens under the Constitution, must have to do with public health, public morals and public safety, public convenience and public welfare.

We respectfully quote from the dissenting opinion of Mr. Justice McReynolds, with whom concurred Mr. Justice Day and Mr. Justice Van Devanter, in the case of *Ruppert* v. *Caffey*, 251 U. S. 264:

"For sixty years, *Ex parte Milligan*, 4 Wall. 2, 120, 125, has been regarded as a splendid exemplification of the protection which this court must extend in time of war to rights guaranteed by the Constitution, and also as decisive of its power to ascertain whether actual military necessity justifies interference with such rights. The doctrines then clearly—I may add, courageously—announced conflict with the novel and hurtful theory now promulgated. A few pertinent quotations from the opinion will accentuate the gravity of the present ruling:

'Time has proven the discernment of our ancestors; for even these provisions, expressed in such plain English words that it would seem the ingenuity of man could not evade them, are *now*, after the lapse of more than seventy years, sought to be avoided. Those great and good men foresaw that troublous times would arise, when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper; and that the principles of constitutional liberty would be in peril, unless established by irrepealable law. The history of the world had taught them that what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever

invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence; as has been happily proved by the result of the great effort to throw off its just authority.

'This nation, as experience has proved, cannot always remain at peace, and has no right to expect that it will always have wise and humane rulers, sincerely attached to the principles of the Constitution. Wicked men, ambitious of power, with hatred of liberty and contempt of law, may fill the place once occupied by WASHINGTON and LINCOLN; and if this right is conceded, and the calamities of war again befall us, the dangers to human liberty are frightful to contemplate. If our fathers had failed to provide for just such a contingency, they would have been false to the trust reposed in them. They knew—the history of the world told them—the nation they were founding, be its existence short or long, would be involved in war; how often or how long continued, human foresight could not tell; and that unlimited power, wherever lodged at such a time, was especially hazardous to free men. For this, and other equally weighty reasons, they secured the inheritance they had fought to maintain, by incorporating in a written constitution the safeguards which *time* had proved were essential to its preservation. Not one of these safeguards can the President, or Congress, or the Judiciary disturb, except the one concerning the writ of *habeas corpus.*'

* * * * * * * *

"Moreover, well-settled rights of the individual in harmless property and powers carefully reserved to the states ought not to be abridged or destroyed by mere argumentation based upon supposed analogies. The Constitution should be interpreted in view of the spirit which pervades it, and always with a steadfast purpose to give complete effect to every part according to the true intendment—none should suffer emasculation by any strained or unnatural construction. And these solemn words we may neither forget nor ignore: 'Nor shall any person * * * be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.' (5th Amend.) 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.' (10th Amend.)"

There is no likeness, similarity, identity or analogy between the confiscation of oil and the forfeiture by states of property in connection with violation of state liquor statutes, as petitioners herein argue, because oil is a harmless property in so far as public health, public morals, and public safety is concerned, but contributes much to the public welfare and public convenience, and is, as stated in the majority opinion of the Circuit Court of Appeals "valuable property" and "not a nuisance *per se.*" We contend that oil is of this classification, a valuable, useful and necessary property, while alcoholic liquor has been branded and condemned by early decisions of this court, and by continuous decisions, as an object which, unless controlled, is dangerous to public health, public safety and public morals.

So we respectfully contend that none of the liquor cases cited by the state are applicable to the confiscation question presented in this case.

Proposition II.

The act is unreasonable because it confers arbitrary, capricious and oppressive powers on state authorities.

We readily agree that conservation of oil and gas resources is a proper subject for state legislation and control. The law is well settled by the decisions of this court, and of the inferior federal courts, and state courts, that states have a power to pass *reasonable* laws pertaining to the conservation of oil and gas. Such laws must be *reasonable,* and may not be arbitrary, capricious or oppressive. Mr. Chief Justice Hughes in delivering the opinion in *Sterling* v. *Constantine,* 287 U. S. 398, says:

> "The existence and nature of the complainants' rights are not open to question. Their *ownership* of the oil is undisputed. Their *right* to the enjoyment and use of these properties subject to *reasonable regulation* by the state in the exercise of its power to prevent unnecessary loss, destruction and waste, is protected by the due process clause of the Fourteenth Amendment. *Ohio Oil Co.* v. *Indiana,* 177 U. S. 190, 44 L. ed. 729, 20 S. Ct. 576, 20 Mor. Minn. Rep. 466; *Lindsley* v. *Natural Carbonic Gas Co.,* 220 U. S. 61, 55 L. ed. 369, 31 S. Ct. 337, Ann. Cas. 1912C, 160; * * *.
>
> "When there is a substantial showing that the exertion of state power has overridden private rights secured by that Constitution, the subject is necessarily one for judicial inquiry in an appropriate proceeding directed against the individuals charged with the transgression."

It seems apparent that the Texas act complained about in this case which gives the State of Texas the right and power to confiscate property of citizens and impose a fine of $1,000.00 a day is *arbitrary, capricious, oppressive* and *unreasonable.*

See *Lindsley* v. *Natural Carbonic Gas Co.,* opinion by Mr. Justice VAN DEVANTER, 220 U. S. 61.

See, also, *Ohio Gas Co.* v. *Conway,* 281 U. S. 146, opinion by Mr. Chief Justice HUGHES from which we quote:

> "The states have a wide discretion in the imposition of taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the national government or violating the guaranties of the Federal Constitution, the states have the attribute of sovereign powers in devising their fiscal systems to insure revenue and foster their local interests. The states, in the exercise of their taxing power, as with respect to the exertion of other powers, are subject to the requirements of the due process and the equal protection clauses of the 14th Amendment, but that amendment imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to schemes of taxation.
>
> * * * * * * *
>
> "With all this freedom of action, there is a point beyond which the state cannot go without violating the equal protection clause. The state may classify broadly the subjects of taxation, but in doing so it must proceed upon a rational basis. The state is not at liberty to resort to a classification that is palpably arbitrary."

See, also, *Champlin Refining Co.* v. *Corporation Commission,* 286 U. S. 210, opinion by Mr. Justice BUTLER:

> "Every person has the right to drill wells on his

own land and take from the pools below all the gas and oil that he may be able to reduce to possession including that coming from land belonging to others, but the right to take and thus acquire ownership is subject to the *reasonable exertion* of the power of the state to prevent unnecessary loss, destruction or waste."

Acts by the state, and regulation by any commission, must be reasonable, and not unreasonable, arbitrary, capricious or oppressive.

The great expounder of the Constitution, Daniel Webster, with prophetic insight, suggested to this very court the situation we are faced with in this case; we respectfully quote from his argument in the case of *Dartmouth College Trustees* v. *Woodward*, 4 Wheat. 518, which is pertinent and applicable here now (Webster, Vol. X, p. 218):

"If the constitution be not altogether waste-paper, it has restrained the power of the legislature in these particulars. If it has any meaning, it is that the legislature shall pass no act directly and manifestly impairing private property and private privileges. It shall not judge by act. It shall not decide by act. It shall not deprive by act. But it shall leave all these things to be tried and adjudged by the law of the land.

* * * * * * *

"By the law of the land is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is, that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society. Everything which may pass under the form of an enactment is not therefore to be considered the law of the land. If this were so, acts of attainder, bills of

pains and penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments, decrees, and forfeitures in all possible forms, would be the law of the land.

"Such a strange construction would render constitutional provisions of the highest importance completely inoperative and void. It would tend directly to establish the union of all powers in the legislature. There would be no general, permanent law for courts to administer or men to live under. The administration of justice would be an empty form, an idle ceremony. Judges would sit to execute legislative judgments and decrees; not to declare the law or to administer the justice of the country. 'Is that the law of the land,' said Mr. Burke, 'upon which, if a man go to Westminister Hall, and ask counsel by what title or tenure he holds his privilege or estate *according to the law of the land,* he should be told, that the law of the land is not yet known; that no decision or decree has been made in his case; that when a decree shall be passed, he will then know *what the law of the land is?* Will this be said to be the law of the land by any lawyer who has a rag of a gown left upon his back, or a wig with one tie upon his head?'

"The plaintiffs contend, in the second place, that the acts in question are repugnant to the tenth section of the first article of the Constitution of the United States. The material words of that section are: 'No state shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.'

"The object of these most important provisions in the national Constitution has often been discussed, both here and elsewhere. It is exhibited with great clearness and force by one of the distinguished persons who framed that instrument, 'Bills of attainder, *ex post*

facto laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. The two former are expressly prohibited by the declarations prefixed to some of the state constitutions, and all of them are prohibited by the spirit and scope of these fundamental charters. Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the convention added this constitutional bulwark, in favor of personal security and private rights; and I am much deceived, if they have not, in so doing, as faithfully consulted the genuine sentiments as the undoubted interests of their constituents. The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret, and with indignation, that sudden changes, and legislative interferences in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more industrious and less informed part of the community. They have seen, too, that one legislative interference is but the link of a long chain of repetitions; every subsequent interference being naturally produced by the effects of the preceding'." (The Federalist, No. 44, by Mr. Madison, Vol. X—15.)

Proposition III.

The act interferes with and creates burdens on interstate commerce.

Oil is property, a legitimate and valuable article of commerce, and in general use throughout the nation; it is an important object of both domestic and foreign commerce.

The regulation of commerce was expressly granted by the Constitution to Congress. (Article I, Sec. 8, Par. 3.)

States have no power to restrict commerce, to interfere with it, or with the articles and objects of commerce.

—*West* v. *Kansas Natural Gas Co.*, 221 U. S. 299; *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50.

Kentucky Whip & Collar Company v. *Illinois Central Railroad Company*, 299 U. S. 334 (number 138, September, 1936, term) opinion ~~from~~ Mr. Chief Justice HUGHES, from which we quote:

> "The Commerce clause (Art. I, §8, ¶3) confers upon the Congress the power to regulate, that is, to prescribe the rule by which commerce is to be governed. This power is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution." (*Gibbons* v. *Ogden*, 9 Wheat. 1.)

And we respectfully quote, as supporting respondent in this case, from the argument of Mr. Daniel Webster in *Gibbons* v. *Ogden*, in this court at the February, term, 1824 (Webster, Vol. XI, p. 11):

> "I contend, therefore, that the people intended, in establishing the Constitution, to transfer from the several states to a general government those high and important powers over commerce, which, in their exercise, were to maintain a uniform and general system. From the very nature of the case, these powers must be exclusive; that is, the higher branches of commercial regulation must be exclusively committed to a single hand. What is it that is to be regulated? Not the commerce of the several states, respectively, but the commerce of the United States. Henceforth, the commerce of the states was to be a *unit;* and the system by which it was to exist and be governed must necessarily be complete, entire, and uniform. Its character was to be described in

the flag which waved over it, *E Pluribus Unum*. Now, how could individual states assert a right of concurrent legislation, in a case of this sort, without manifest encroachment and confusion? It should be repeated, that the words used in the Constitution, 'to regulate commerce,' are so very general and extensive, that they may be construed to cover a vast field of legislation, part of which has always been occupied by state laws; and therefore the words must have a reasonable construction, and the power should be considered as exclusively vested in Congress so far, and so far only, as the nature of the power requires."

As to rights and power of seizure of offending property see the following:

Mugler v. *Kansas*, 123 U. S. 623; opinion by Mr. Justice HARLAN: There he lays down the rule in reference to alcoholic liquor being prejudicial to the health, the morals and the safety of the people and for that reason is a legitimate subject for the exercise of police powers by the state.

See, also, *Samuels* v. *McCurdy*, 267 U. S. 188, opinion by Mr. Chief Justice TAFT, and dissenting opinion by Mr. Justice BUTLER, from which dissenting opinion we respectfully quote:

"The insistence is that the state is without power to seize and destroy a private supply of intoxicating liquor lawfully acquired before the prohibitory legislation, and kept in one's house for his own use. Such seizure and destruction can be supported only on the ground that the private possession and use would injure the public. See *Mugler* v. *Kansas*, 123 U. S. 623; *Gardner* v. *Michigan*, 199 U. S. 325.

* * * * * * * *

"Any suggestion that the destruction of such private supply lawfully acquired and held for the use of the owner in his own home is necessary for, or has any relation to, the suppression of sales, or to the regulation of the liquor traffic, or to the protection of the public from injury, would be fanciful and without foundation.

* * * * * * * * *

"To me it seems very plain that, as applied, the law is oppressive and arbitrary, and that the seizure deprived plaintiff in error of his property in violation of the due process clause of the 14th Amendment. I would reverse the judgment of the state court."

We respectfully assert that if the Texas statute for confiscation of oil as a punishment for violation of the proration law does not infringe upon the rights of the citizens of the United States under the provisions of the Federal Constitution, then there is no boundary which the State is forbidden to cross in proceeding against the property, liberty and life of the citizen. Confiscation may be extended to all kinds of property. Each State may assume to exercise such power and pass laws to confiscate the product of the farm, the field, the forest and the factory within the state boundaries. We contend that the Federal Constitution is the citizen's shield against such acts; and the alleged violator of the law, and the creditors in this case who in good faith dealt with the oil producer without knowledge or notice of any irregularity or law violation, are in a position to assert constitutional rights. Under the decisions of this court every citizen, and even an alien *(Truax* v. *Raich,* 239 U. S. 33, opinion by Mr. Justice HUGHES) may raise the Federal Constitution as a shield against the wrongful aggression of the State.

The decision of the United States District Court and the decision of the Circuit Court of Appeals of the Fifth Circuit are right.

We respectfully submit that the Circuit Court's decision should be affirmed.

Dated November 3, 1937.

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